

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ACUITAS CAPITAL, LLC,

Plaintiff,

-against-

IDEANOMICS, INC.,

Defendant.

23 Civ. 02124 (PAE)

**ORDER MODIFYING ORDER GRANTING
PRELIMINARY INJUNCTION**

PAUL A. ENGELMAYER, District Judge:

On March 31, 2023, the Court held a hearing on the motion of Plaintiff Acuitas Capital, LLC (“Acuitas Capital”) for a preliminary injunction and preliminary declarative relief pursuant to Federal Rule of Civil Procedure 65 and 28 U.S.C. § 2201 (the “Preliminary Injunction Motion”) and issued an Order Granting Preliminary Injunction (ECF No. 41) (the “Preliminary Injunction Order”).

On April 7, 2023, the Court held a hearing on the motion of Acuitas Capital to modify the Preliminary Injunction Order.

The Court has reviewed Acuitas Capital’s Memorandum of Law in Support of Application to Modify the Preliminary Injunction Order; the Declaration of Andrew B. Kratenstein in Support of Acuitas Capital’s Application to Modify the Preliminary Injunction Order; Defendant Ideanomics, Inc.’s (“Ideanomics”) Memorandum of Law in Opposition to Plaintiff’s Motion to Modify Order; the Declaration of Alfred P. Poor in

Opposition to Motion for Injunctive Relief; and the argument presented by the parties during the hearing held on April 7, 2023.

For the reasons stated on the record of the hearing, IT IS HEREBY ORDERED that:


1. Paragraph 4 of the Preliminary Injunction Order be, and hereby is, modified so that it now reads:

Through and including May 2, 2023, Ideanomics shall not, without the prior written consent of Acuitas Capital, offer, pledge, sell, contract to sell, sell any option contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of capital stock of Ideanomics or any securities convertible into or exercisable or exchangeable for shares of capital stock of Ideanomics (including, without limitation, pursuant to the Standby Equity Purchase Agreement agreed between Ideanomics and YA II PN ("YA") in August of 2022 (the "SEPA")), provided, however, that if the trading price of Ideanomics Common Stock is at least 20% greater than the conversion price of the Preferred Stock, Ideanomics shall have the right to utilize the SEPA to sell up to 3% of the outstanding volume of Ideanomics' Common Stock.

2. Paragraph 6 of the Preliminary Injunction Order be, and hereby is, modified so that it now reads:

Pending further briefing as to the legality of such sale(s), and an ensuing court order, Ideanomics shall hold in escrow, and not dissipate, the proceeds of any sale(s) of any offer, pledge, sale, contract to sell, sale of any option or contract to purchase, purchase of any option or contract to sell, granting of any option, right or warrant to purchase, lending, or otherwise transfer or dispose of, directly or indirectly, any shares of capital stock of Ideanomics or any securities convertible into or exercisable or exchangeable for shares of capital stock of Ideanomics, that was entered into on or after February 1, 2023, and through May 2, 2023, including, without limitation, any funds received from YA pursuant to the SEPA. In addition, the money held in escrow as of the date of this Order, which derives from transactions pursuant to the Amended SDPA debenture, shall remain in escrow, for the benefit of Acuitas.

SO ORDERED.


HON. PAUL A. ENGELMAYER
UNITED STATES DISTRICT COURT JUDGE

Dated: April 7, 2023
New York, New York